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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968.

No. [redacted] 54

JOHN S. BOYLE, CHIEF JUDGE OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS; JOHN J. STAMOS, STATE'S ATTORNEY OF COOK COUNTY, ILLINOIS; JOSEPH I. WOODS, SHERIFF OF COOK COUNTY, ILLINOIS; MAURICE W. LEE AND JOHN S. LIMPERIS, MAGISTRATES OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS,

Appellants,

vs.

LAWRENCE LANDRY, ROMMELL MULLER, JOSEPH H. REYNOLDS, DAVID A. REYNOLDS, JAMES WASHINGTON, FRANK DITTO, ROBERT LUCAS, ROBERT BROWN, MICHAEL ROGERS, BERNARD HUGHES, ARNOLD FORD, VISSA MARIE TURNER, WYSINGO TURNER, ANDREW BROWN, CHARLES FLETCHER, JAMES JONES, HERMAN TOWNSEND, JEROME PARKER, RUDY HOOPER, AND ACT, AN UNINCORPORATED ASSOCIATION,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

BRIEF FOR APPELLANTS.

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INDEX.

PAGE

Opinions Below 1

Jurisdiction 2

Text of Statute Involved 3

Question Presented 4

Statement of Case 4

Summary of Argument 7

Argument

I. The Determination by the Three Judge Court of the Unconstitutionality of Illinois Revised Statute, 1967, Chapter 38, Section 12-6(a)(3), on Grounds of Being Overbroad, and Therefore, Violative of the First Amendment to the Constitution of the United States, Is Erroneous 8

A. Plaintiffs Are Not Entitled to a Determination of Constitutionality of the Statute, Since They Have Pleaded no Specific Facts Which Depict Standing to Challenge the Intimidation Statute 9

B. The First Amendment Does Not Protect Threats Communicated With the Intention to Force Another to Surrender His Freedom of Choice 11

(1) History of Illinois Extortion Statute. 11

(2) First Amendment Cases 13

(3) The Trial Court Failed to Consider Section (a)(3) of the Illinois Intimidation Statute as a Protection of Individual Freedom of Choice 20

(4) The Statute Is Not Overbroad 23

Conclusion 28

Appendix A to Brief 1A

Appendix B to Brief 28A

CITATIONS.

Cases.

Abrams v. United States, 250 U. S. 616, 628.....15, 16
American Communication Association v. Douds, 339 U. S. 382, 395.....16, 19
Bates v. City of Little Rock, 361 U. S. 516..... 16
Bridges v. California, 314 U. S. 252, 277.....16, 19
Brown v. Louisiana, 383 U. S. 131, 168, 166..... 19
Bryant v. Zimmerman, 278 U. S. 63..... 16
Cameron v. Johnson, 390 U. S. 611.....3, 10
Cantwell v. Connecticut, 310 U. S. 296, 309.....16, 19
Carbo v. United States, 314 F. 2d 718..... 24
Carroll v. President and Commissioners of Princess Anne County, 37 L. W. 4041, 4042..... 20
Chaplinsky v. New Hampshire, 315 U. S. 568, 572..... 19
Cox v. Louisiana, 379 U. S. 559, 566, 574..... 17
Cox v. New Hampshire, 312 U. S. 569, 574..... 13
Davis v. Massachusetts, 167 U. S. 43..... 16
Debs v. United States, 249 U. S. 211..... 16
Dennis v. United States, 341 U. S. 494, 523.....13, 16
Dombrowski v. Pfister, 380 U. S. 480.....3, 7, 9, 10
DuBois Clubs v. Clark, 389 U. S. 309, 312-313.....10, 11
Edwards v. South Carolina, 372 U. S. 229..... 17
Feiner v. New York, 340 U. S. 315..... 16
Franklin Union v. People, 220 Ill. 355, 379; 77 N. E. 176 13
Frohwerk v. United States, 249 U. S. 204..... 16
Giboney v. Empire Storage Ice Co., 336 U. S. 490, 498, 502 .....15, 18

Gitlow v. New York, 268 U. S. 652, 665 ..... 16, 19
Gompers v. Buck Stove & R. Co., 221 U. S. 418, 439 ... 14, 17
Landry v. Daley, 280 F. Supp. 929 9
Milk Wagon Drivers Union v. Meadowmoor Dairies, 312 U. S. 287, 293 ..... 15, 16, 18
N. A. A. C. P. v. Alabama, 357 U. S. 449 16
N. A. A. C. P. v. Button, 371 U. S. 415, 433 ..... 15, 16, 17
National Labor Relations Board v. Denver Building and Construction T. Council, 341 U. S. 675 19
Nick v. United States, 122 F. 2d 660, cert. den. 314 U. S. 687, rehearing den. 314 U. S. 714, rehearing den. 316 U. S. 710 24
Pierce v. United States, 252 U. S. 238 16
Robertson v. Baldwin, 165 U. S. 275, 281 13
Roth v. United States, 354 U. S. 476, 514 19
Schaefer v. United States, 251 U. S. 467 16
Schenck v. United States, 249 U. S. 48, 52 ..... 14, 16, 17
Smith v. California, 361 U. S. 147, 168 19
Speiser v. Randall, 357 U. S. 513, 537 ..... 16, 19
Talley v. California, 362 U. S. 60 17
Terminello v. City of Chicago, 337 U. S. 1 16
United States v. Compagna, 146 F. 2d 524, cert. den. 324 U. S. 867, rehearing denied 325 U. S. 892 24
United States v. Harriss, 347 U. S. 612 16
United States v. Petrillo, 332 U. S. 1 19
Whitney v. California, 274 U. S. 357, 378 ..... 16, 19
Zwickler v. Koota, 389 U. S. 241, 257 ..... 3, 10

Statutes.

Revised Laws of Illinois, 1827, p. 145, §§ 106, 108..... 11
Revised Laws of Illinois, 1833, pp. 195, 196, §§ 109, 111 11
Revised Laws of Illinois, 1845, p. 170, §§ 109, 111..... 11
Revised Laws of Illinois, 1863, p. 70, §§ 1, 2..... 11
Illinois Revised Statutes, 1874, Chapter 38, Section 93 11
Illinois Revised Statutes, 1874, Chapter 38, Sections 158, 159 11-12
Illinois Revised Statutes, 1874, Chapter 38, Section 211 12
Laws of Illinois, 1901, p. 144, § 1..... 12
Laws of Illinois, 1921, p. 401, §§ 1-3, 5..... 12
Illinois Revised Statutes, 1959, Chapter 38, Sections 240-243; 376-378; 456..... 12
Illinois Revised Statutes, 1961, Chapter 38, Section 12-6 12
Illinois Revised Statutes, 1967, Chapter 38, Section 12-6 13

IN THE

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No. 244

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Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

BRIEF FOR APPELLANTS.

OPINIONS BELOW.

The Opinion of the Three Judge Court for the Northern District of Illinois, Eastern Division, is reported in 280 F. Supp. 938 (A. 55). On December 28, 1967, prior to the convening of the Three Judge Court, one of the District Judges overruled the Motion of these Appellants to dismiss the proceedings and his Opinion is reported in 280 F. Supp. 929 (A. 35).

JURISDICTION.

This suit was brought by the Appellees under 28 U. S. C., Sections 1331, 1332, 1343(3) and (4), 2201, 2202, 2281, 2284; 42 U. S. C., Sections 1981, 1983 and 1985; and the Constitution of the United States and, more particularly, the First, Fourth, Fifth, Sixth, Eighth, Tenth, Thirteenth, Fourteenth, and Fifteenth Amendments thereto. The suit was prosecuted to challenge the constitutional validity of numerous sections of the Illinois Criminal Code of 1961, as amended, namely: Chapter 38, Sections 25-1(a)(1)(2) and (3), which proscribe mob action; Chapter 38, Section 31-1, which relates to the offense of resisting arrest; Chapter 38, Sections 12-2, 12-4 and 12-6, which proscribe aggravated assault, aggravated battery and intimidation, respectively. The complaint also questioned the constitutional validity of these statutes as they were being applied to the plaintiffs. The Opinion and a Judgment Order of the Three Judge Court, which enjoin the defendants from the enforcement or the prosecution of Chapter 38, Sections 25-1(a)(2) and Chapter 38, Section 12-6(a)(3), Ill. Revised Statutes, 1967, were entered on March 1, 1968. A Decree for Permanent Injunction was entered on April 2, 1968. A Notice of Appeal which seeks to review that portion of the injunctive decree which enjoins the enforcement and prosecution of Chapter 38, Section 12-6(a)(3), was filed on behalf of the aforesaid Appellants on April 3, 1968, and the Appellees, on April 5, 1968, filed their notice of cross-appeal. By an order entered by the Honorable Justice Thurgood Marshall on June 6, 1968, the time to file the record and to docket the Appeal had been extended to and including July 1, 1968. Probable jurisdiction of the Appeal of Appellants was noted by this Court on December 9, 1968, while the cross-appeal of Appellees was dismissed on the same date for

failure to comply with Rule 13(1) of the Rules of the Supreme Court of the United States.

The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Title 28, United States Code, Sections 1253, 2281. The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: *Dombrowski* v. *Pfister*, 380 U. S. 480; *Zwickler* v. *Koota*, 389 U. S. 241; *Cameron* v. *Johnson*, 390 U. S. 611.

STATUTES INVOLVED.

The provisions of the Statute involved in this Appeal are cited as Chapter 38, Section 12-6(a)(3) and are found at page 1544, Volume 1, Illinois Revised Statutes, 1967. This section reads as follows:[1]

"12-6. § 12-6. Intimidation). (a) *A person commits intimidation when, with intent to cause another to perform or to omit the performance of any act, he communicates to another a threat to perform without lawful authority any of the following acts:*

(1) Inflict physical harm on the person threatened or any other person or on property; or
(2) Subject any person to physical confinement or restraint; or
(3) *Commit any criminal offense;* or
(4) Accuse any person of an offense; or
(5) Expose any person to hatred, contempt or ridicule; or
(6) Take action as a public official against anyone or anything, or withhold official action, or cause such action or withholding; or
(7) Bring about or continue a strike, boycott, or other collective action.

(b) Penalty.
A person convicted of intimidation shall be fined not

1. For purposes of clarity the entire section has been set forth. Only the italicized portion is involved in this Appeal.

to exceed $5,000.00 or imprisoned in a penal institution other than the penitentiary not to exceed one year or in the penitentiary from one to five years, or both fined and imprisoned. As amended by act approved April 31, 1965. L. 1965, p. 387."

QUESTION PRESENTED.

Is a State criminal extortion statute, which prohibits one from communicating a threat to another to commit a criminal offense, unconstitutional as being overbroad, and, therefore, violative of the First Amendment to the Constitution of the United States?

STATEMENT OF THE CASE.

On October 26, 1967, the Appellees, composed of seven sub-classes, filed a complaint in the United States District Court for the Northern District of Illinois, Eastern Division, against numerous officials of the City of Chicago and County of Cook (A. 4-29). The complaint challenged the constitutionality of certain sections of the Illinois Criminal Code of 1961, as amended, requested the convening of a Three Judge Court pursuant to 28 U. S. C. 2281 and 2284, and prayed for a temporary and permanent injunction to restrain the defendants from the enforcement and prosecution of the enumerated Illinois Statutes (A. 18-20). Five sub-classes of Appellees to which reference is made in the complaint are composed of persons who were arrested under several of the challenged statutes prior to the institution of the suit in the Northern District of Illinois, Eastern Division, and whose prosecutions have been and are presently pending in the State courts of Illinois (A. 5-6). None of those persons, whose prosecutions are pending, has been arrested or charged with a violation of the Illinois Intimidation Statute (Chapter 38, Section 12-6,

Illinois Revised Statutes, 1967). The complaint alleged that the provisions of the Illinois Criminal Code of 1961, as amended, specifically, Chapter 38, Sections 25-1(a)(1)(2)(3) (Mob Violence); Chapter 38, Section 31-1 (Resisting Arrest); Chapter 38, Section 12-2 (Aggravated Assault); Chapter 38, Section 12-4 (Aggravated Battery); and Chapter 38, Section 12-6 (Intimidation), are void and illegal on their face and as applied to the Appellees (A. 16-17).

Certain of the enumerated defendants, Appellants herein, moved, on November 9, 1967, to strike and dismiss the complaint, to oppose the entry of a temporary injunction restraining the enforcement of the State criminal statutes challenged, and to oppose the convening of a Three Judge Court (A. 30-32).

A single trial judge, Will, J., in an opinion dated December 28, 1967, denied the motion of Appellants to dismiss the cause, ordered the convening of a Three Judge Court to consider the constitutionality of the challenged State statutes, and held in abeyance the issue of the alleged unconstitutional application of the State statutes by Appellants pending a determination of the threshhold question of constitutionality (A. 35-49). The Appellants agreed informally that all pending prosecutions of the named Appellees for acts prior to the filing of the instant complaint be held in *status quo;* accordingly, there was no ruling made with respect to Appellees' motion for temporary injunctive relief (A. 37, note 2).

The cause was set for hearing before a Three Judge Court on January 26, 1968, pursuant to the provisions of 28 U. S. C. 2281, 2284. Appellants filed an answer and affirmative defenses on January 19, 1968, which denied the material allegations of the complaint and affirmatively asserted, as regards the Appellees' request for injunctive relief, the grounds of lack of jurisdiction, failure to state

a claim upon which relief can be granted, and federal abstention as well as the prohibition embodied in 28 U. S. C. 2283, as reasons for denying such relief (A. 49-53).

On March 1, 1968, the panel of three judges issued an opinion declaring (1) the constitutional invalidity of certain subsections of the Illinois Criminal Code of 1961, as amended, namely, Chapter 38, Section 25-1(a)(2) and Chapter 38, Section 12-6(a)(3), Illinois Revised Statutes, 1967; (2) the constitutional validity of certain sub-sections of the Illinois Criminal Code of 1961, as amended, namely, Chapter 38, Sections 25-1(a)(1)(3), Chapter 38, Section 31-1, and Chapter 38, Sections 12-6(a)(1)(2)(4)(5)(6)(7)[2] (A. 55-102).

The decree of permanent injunction, entered April 2, 1968, perpetually enjoined the Appellants from the enforcement and the prosecution of Chapter 38, Section 12-6(a)(3), Illinois Revised Statutes, 1967 (A. 104). Notice of Appeal was filed by Appellants on April 3, 1968, together with a Stipulated Designation of Record.

2. Plaintiffs have abandoned their challenge to the constitutionality of the Illinois "Aggravated Assault" and "Aggravated Battery" Statutes, Chapter 38, Sections 12-2, and 12-4, Illinois Revised Statutes, 1967 (A. 58).

SUMMARY OF ARGUMENT.

An analysis of the decisions of this Court decided on issues involving freedom of expression clearly reflect that this Court has never sanctioned, as protected speech, utterances in a context of violence which become part of an instrument of force or utterances which encourage actual breach of law. The form and content of expression which constitutes an interference with the rights of other individuals can be said to convey no essential part of any exposition of ideas protected by the First Amendment. The effect of the decision of the lower court is to insulate, via the First Amendment, threatening acts which force other individuals to surrender their freedom of choice. The statute under consideration, when measured by the scope of the decisions of the Court, fails to transgress upon the sanctity of free expression of ideas, since the protection of rights of other individuals stands upon as equal footing as those similar freedoms to which a speaker is entitled.

Further, the complaint in this cause does not demonstrate the necessary prerequisites to sufficiently support equitable federal relief under the rationale of *Dombrowski* v. *Pfister*, 380 U. S. 480, since the determination of the constitutionality of a statute must be dependent upon sufficient factual allegations to support the extraordinary use of federal equity jurisdiction.

ARGUMENT.

I.

THE DETERMINATION BY THE THREE JUDGE COURT OF THE UNCONSTITUTIONALITY OF ILLINOIS REVISED STATUTE, 1967, CHAPTER 38, SECTION 12-6(a)(3), ON GROUNDS OF BEING OVERBROAD AND, THEREFORE, VIOLATIVE OF THE FIRST AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES, IS ERRONEOUS.

The holding of the Court below, with respect to its declaration of constitutional invalidity of Chapter 38, Section 12-6(a)(3), Illinois Revised Statute, 1967, is that, while the provision was not vague, and while the state may legitimately proscribe the making of threats to commit criminal offenses against persons or property, which conduct would constitute substantial evil, the statute is "overbroad since it prohibits threats of insubstantial evil" (A. 94). The Court further stated that "the commission of offenses against public order *only* (emphasis of the Court), however, is not such a substantial evil that the state may prohibit the threat of it" (A. 94). The Court expressly held that the language of Chapter 38, Section 12-6(a)(3) constituted an overbroad restriction on freedom of speech because the proscription of insubstantial evil is outweighed by the public interest in giving legitimate political discussion a wide berth (A. 94).

It is Appellant's position that (1) the Court erred in not abstaining from adjudicating the constitutionality of this statute; (2) the court erred in ruling that a threat to commit a criminal offense which is communicated to another with the intent to cause another to act or not to act is protected by the First Amendment; (3) the court erred in

interpreting "criminal offense" to mean any penal offense rather than those penal offenses defined by the Criminal Code; and (4) the court erred in judging this section of the Intimidation Statute on the basis of the substantiality of the crime threatened rather than on the basis of the effect of the threat on the person toward whom it is directed.

A. Plaintiffs Are Not Entitled to a Determination of Constitutionality of the Statute, Since They Have Pleaded No Specific Facts Which Depict Standing to Challenge the Intimidation Statute.

The Court determined that the complaint of the plaintiffs is sufficient to form a basis for equitable relief in the federal courts with regard to the Intimidation Statute (*Landry* v. *Daley*, 280 F. Supp. 929). It is Appellants' contention that, apart from what it considers an erroneous enlargement of the principles of the First Amendment in its application to a statute which prohibits extortion by threats without lawful authority to commit a criminal offense, the complaint in this cause does not demonstrate the necessary prerequisites to sufficiently support equitable federal relief under *Dombrowski* v. *Pfister*, 380 U. S. 480, or its progeny.

Plaintiffs' complaint, insofar as it challenges the validity of the statute here under consideration, alleges generally that the members of sub-class seven, all Negroes in the City of Chicago, are currently being "intimidated in the exercise of their First Amendment rights through the wholesale use of unconstitutional statutes to prosecute members of the Negro community and to threaten, intimidate, hinder and deter said First Amendment rights" (A. 7). Plaintiffs allege neither arrests under the Intimidation Statute nor specific facts tending to indicate threatened misuse of such statute to their detriment. Under such

circumstances, it is the contention of Appellants that the minimum requirements necessary to justify declaratory relief with respect to the Intimidation Statute is lacking.

In both *Dombrowski* v. *Pfister*, 380 U. S. 480, and *Zwickler* v. *Koota*, 389 U. S. 241, this Court was afforded an opportunity, based upon specific allegations of fact, to determine whether certain state statutes and initiated and threatened prosecution thereunder resulted in such an adverse effect upon free expression as to require declaratory relief by the federal courts. In neither case was the District Court requested to decide the constitutional question in a vacuum; in neither case was the pleading based upon nothing more than conclusory allegations that the purpose of the threatened enforcement of a statute was to harass and intimidate (*Cf. DuBois Clubs* v. *Clark*, 389 U. S. 309, 312, 313). Yet, without the benefit of a single specific fact upon which the enumerated statute or its possible threatened enforcement created a "chilling" effect on plaintiffs' First Amendment rights, the lower court proceeded to a determination of the constitutionality of the Intimidation Statute. Indeed, an examination of the complaint reveals the bare conclusory allegation that plaintiffs are intimidated by the Intimidation Statute—and that this "fact" coupled with allegations of vagueness and overbreadth of the statute constituted a sufficient foundation for declaratory relief in the federal court.

The effect of the action taken in this case is to enlarge the concept of expanded federal jurisdiction espoused in *Dombrowski* to a pleader's option, and to jettison the doctrine of abstention in First Amendment cases without requiring more explicit pleadings to determine whether the circumstances of the individual case warranted the Dombrowski approach (*Zwickler* v. *Koota*, 389 U. S. 241, 257—concurring opinion of Mr. Justice Harlan; *Cameron* v.

Johnson, 390 U. S. 611; *DuBois Clubs* v. *Clark*, 389 U. S. 309, 312, 313).

B. The First Amendment Does Not Protect Threats Communicated With the Intention to Force Another to Surrender His Freedom of Choice.

(1) History of the Illinois Extortion Statute.

In 1827, the first Illinois extortion statute was passed. It prohibited the obtaining of "money, goods, chattels or other valuable things" through the use of letters or writings that threatened the accusation of a crime or misdemeanor or the exposure of infirmaties or failings. It was also a type of assault and criminal libel statute in that it proscribed threats to kill or harm the person or property of another and threats to expose infirmaties even though these latter threats were not connected with the extortion element. A misdemeanor penalty of up to $500 fine and six months in jail were provided (Revised Laws of Illinois 1827, p. 145 §§ 106, 108; see also R. L. 1833, pp. 195, 196 §§ 109, 111; R. L. 1845, p. 170 §§ 109, 111).

In 1863, threats to prevent a man from working or a property owner from using his property were made criminal offenses (Illinois Laws 1863, p. 70 §§ 1, 2). Under these statutes, it was unlawful for one to seek to prevent another from working or enjoying the use of his land by "threat, intimidation or otherwise", or "threats, suggestions of danger or other means." A five hundred dollar fine or six month jail sentence was the prescribed penalty.

In 1874, the Illinois legislature recodified these three sections. The 1827 statute was not substantially changed (Illinois Revised Statutes, 1874, Chapter 38 § 93). The other two statutes were narrowed by modifying the intimidation by "other means" to "any unlawful means" or "unlawful interference." (Illinois Revised Statutes, 1874, Chapter 38

§§ 158, 159.) These statutes retained their misdemeanor punishment. The common law crime of extortion by public officials was also added (Illinois Revised Statutes 1874, Chapter 38 § 211).

In 1901, the felony of Extortion by Threats was added (Laws of Illinois 1901, p. 144 § 1). The Statute provided for a prison term up to twenty years for persons who intended to extort money, goods, chattels, or other valuable things by threats to kill, injure, kidnap or destroy property.

In 1921, extortions in connection with labor organizations were added to the Criminal Code (Law of Illinois 1921, p. 401 §§ 1-3, 5). Therefore, by 1959, the last session of the Illinois legislature prior to the adoption of the Illinois Criminal Code of 1961, Illinois had eight separate extortion sections of a general nature, excluding special intimidation sections such as compelling confessions or intimidating jurors, which latter sections are not within the statute under consideration by this Court (Illinois Revised Statutes, 1959, Chapter 38 §§ 240-243, 376-378; 456).

In 1961, Illinois obtained a completely revised Criminal Code. All of the above sections were combined in Chapter 38 § 12-6, Intimidation, which was made a misdemeanor (Illinois Revised Statutes, 1961, Chapter 38, Section 12-6). The Revision Committee commented as follows: "This section defines and prohibits as intimidation a wide range of acts previously proscribed in less identifiable form in Chapter 38 §§ 376-383 . . . Note that intimidation requires a specific intent to cause another to perform 'or to omit' the performance of any act (such as testifying), and the threat must be 'communicated' with that intent." (S. H. A. Chapter 38 § 12-6, Committee Comments.) This explanation focuses upon the protected subject of this legislation, *the exercise of an individual's freedom of choice and action*, which is the key element differentiating this statute from

statutes which merely protect public order. This type of protection was forecast by the Illinois Supreme Court in 1906 when in the case of *Franklin Union* v. *People*, 220 Ill. 355, 77 N. E. 176, it said (p. 379):

> "the citizens, when engaged in lawful pursuits, must be accorded the right to walk the public streets of our cities and on country highways in absolute security, and to go to and return from his home and place of business or employment without being interfered with. To follow him, to spy after him, to stop him and threaten him, to put him in fear, to intimidate him or to coerce him are, alike, unlawful. Intimidation and coercion are relative terms. What would put in fear a timid girl or weak woman or man might not terrorize the strong and resolute. All are alike entitled to the protection of the law." (*Franklin Union* v. *People*, 220 Ill. 355, 379.)

In 1965, Section 12-6 was amended to include a felony penalty in addition to the misdemeanor punishment (Illinois Revised Statutes, 1967, Chapter 38, Section 12-6).

(2) First Amendment Cases.

In 1896, the Court firmly stated that the first Amendment protections included exceptions in its application—that all exercises of speech need not be tolerated (*Robertson* v. *Baldwin*, 165 U. S. 275, 281). As later stated by Chief Justice Hughes in *Cox* v. *New Hampshire*, 312 U. S. 569 (p. 574):

> "Civil liberties, as guaranteed by the Constitution imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses."

This concept was reaffirmed by Mr. Justice Frankfurter in his concurring opinion in *Dennis* v. *United States*, 341 U. S. 494, where it was stated (p. 523):

> "Free speech is subject to prohibition of those abuses of expression which a civilized society may forbid."

Two general tests were initially propounded by the Court in determining whether the speech engaged in was protected by the First Amendment. In *Gompers* v. *Buck Stove & R. Co.*, 221 U. S. 418, the Court stated that when speech was exercised in certain contexts, the speech acquired additional elements not inherent in the words themselves and thereby lost its original character (p. 439):

> "In the case of an unlawful conspiracy, the agreement to act in concert when the signal is published gives the words 'Unfair', 'We don't patronize', or similar expressions, a force not inhering in the words themselves, and therefore exceeding any possible right of speech which a single individual might have. Under such circumstances they become what have been called 'verbal acts', and as much subject to injunction as the use of any other force whereby property is unlawfully damaged."

A different situation was presented by *Schenck* v. *United States*, 249 U. S. 48, and its five companion cases[3] involving the constitutionality and application of the Espionage Act of June 15, 1917. These cases involved speech in its pure form: the writing of pamphlets and the giving of a speech. The test to be applied in this kind of situation was cogently stated by Mr. Justice Holmes (p. 52):

> "The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent."[4]

The thrust of this approach was to insure maximum protection of that kind of speech which basically involved the

3. *Frohwerk* v. *United States*, 249 U. S. 204; *Abrams* v. *United States*, 250 U. S. 616; *Debs* v. *United States*, 249 U. S. 211; *Schaefer* v. *United States*, 251 U. S. 467; *Pierce* v. *United States*, 252 U. S. 238.

4. In *Whitney* v. *California*, 274 U. S. 357, Mr. Justice Brandeis, in his concurring opinion, added that the evil must be both substantive and substantial.

dissemination, exposition or advocacy of ideas. As stated by Mr. Justice Holmes in his dissent in *Abrams* v. *United States*, 250 U. S. 616 (p. 628):

> "It is only the present danger of immediate evil or an intent to bring it about that warrants Congress in setting a limit to the expression of opinion where private rights are not concerned."

A third category of cases was exemplified by the problem presented in *Milk Wagon Drivers Union* v. *Meadowmoor Dairies*, 312 U. S. 287—the category of speech plus conduct. Here it was held that picketing, following a series of acts of violence, could be enjoined. The Court's approach to the speech plus conduct method of communication was well summarized in *Giboney* v. *Empire Storage and Ice Co.*, 336 U. S. 490 (p. 502):

> "It is true that the agreements and course of conduct here were as in most instances brought about through speaking and writing. But it has never been deemed an abridgement of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written or printed."

While these or similar categorizations of speech are readily discernible from the Court's opinions, the approach to each case is not capable of being so neatly refined. Indeed, throughout the history of First Amendment cases, the Court, while acknowledging the different interests and problems posed by speech in its pristine form, verbal acts, and speech plus conduct, has steadfastly refused to allow such categories to inhibit its analysis or decisions. The reason is evident. Speech in its manifold forms is too important and vital a part of our democracy to be subjected to strict categorizations or rigid tests. Just as the exercise of free speech needs "breathing room" to survive (*N. A. A.*

C. P. v. *Button*, 371 U. S. 415, 433), so too does the application of First Amendment principles.

Certain consistencies, nonetheless, do emerge. First, the expression and advocacy of ideas will be jealously guarded against any but the most necessary encroachments; second, speech when contextually used to bring other considerations into focus will be the subject of reasonable prohibitions; and third, speech plus conduct may be subjected to closer scrutiny under a balance of interests test.

The "clear and present danger" test was applied in the following cases: *Schenck, Frohwerk, Debs, Abrams, Schaefer, Pierce, Whitney*[5] (concurring opinion), *Cantwell*,[6] *Bridges*,[7] *Terminello*,[8] *Feiner*[9] and *Dennis*.[10] These cases have a single thread connecting them—each involved speech in its primary form and therefore was subject to the closest of scrutiny. The "balancing of interests" test or a variation thereof was applied in the following cases: *Davis*,[11] *Gitlow*,[12] *Milk Wagon Drivers Union*,[13] *Douds*,[14] *Harriss*,[15] *NAACP* v. *Alabama*,[16] *Bryant*,[17] *Speiser*,[18] *Bates*,[19]

5. 274 U. S. 357.
6. 310 U. S. 296.
7. 314 U. S. 252.
8. 337 U. S. 1.
9. 340 U. S. 315.
10. 341 U. S. 494.
11. 167 U. S. 43.
12. 268 U. S. 652.
13. 312 U. S. 292.
14. 339 U. S. 382.
15. 347 U. S. 612.
16. 357 U. S. 449.
17. 278 U. S. 63.
18. 357 U. S. 513.
19. 361 U. S. 516.

Talley,[20] *Button*,[21] and *Edwards*.[22] In these cases a determining factor was whether a sufficient legitimate state interest was involved, and most of the cases involved verbal acts or speech plus conduct. Yet, it must be noted that the determinations in these cases may have been the same regardless of the test utilized. That the test alone was not determinative of the decision is illustrated in the *Whitney* case (concurring opinion of Mr. Justice Brandeis applying the "clear and present danger" test), and more recently in *Cox* v. *Louisiana*, 379 U. S. 559, where the Court used a variation of the "balance of interests" test but specially noted its decision would be the same under the "clear and present danger" test (p. 566).

What emerges from this summary review of selected cases is that neither the test applied nor the category into which the speech falls is necessarily determinative of the constitutionality of a statute or its application. Rather, a totality of circumstances will be examined in light of the numerous interests involved.

Regardless of the circumstances presented, the Court has qualified its opinion to make speech combined with force or illegal conduct outside the scope of protection of the First Amendment. A survey of such cases is illustrative:

In *Gompers*, a contempt case based upon the violation of an injunction prohibiting certain publications, the Court stated that when words were used in certain contexts they assumed a force not inhering in the words themselves and became "verbal acts".

In *Schenck*, Mr. Justice Holmes emphasized that the content of the circulars need be judged in the context of their use, adding (p. 52):

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20. 362 U. S. 60.
21. 371 U. S. 415.
22. 372 U. S. 229.

> "But the character of every act depends upon the circumstance in which it is done. . . . The most stringent protection of free speech would not protect a man in falsely shouting fire in a theater, and causing panic. It does not even protect a man from an injunction against *uttering words that may have all the effect of force.*" (Emphasis added.)

In *Milk Wagon Drivers Union* v. *Meadowmoor Dairies*, an injunction case prohibiting picketing by a union because of a background of violence, the Court stated (p. 293):

> "It must never be forgotten, however, that the Bill of Rights was the child of the Enlightenment. Back of the guaranty of free speech lay faith in the power of an appeal to reason by all the peaceful means for gaining access to the mind. It was in order to avert force and explosions due to the restrictions upon rational modes of communication that the guaranty of free speech was given a generous scope. But utterance in a context of violence can lose its significance as an appeal to reason and become part of an instrument of force. Such utterance was not meant to be sheltered by the Constitution."

In *Giboney*, where the issue concerned the validity of an injunction against picketing issued pursuant to a Missouri restraint of trade law, the Court, in upholding the injunction, stated as follows (pp. 498, 502):

> "It rarely has been suggested that the constitutional freedom for speech and press extends its immunity to speech or writing used as an integral part of conduct in violation of a valid criminal statute. We reject the contention now . . .
>
> "It is true that the . . . course of conduct here were as in most instances brought about through speaking and writing. But it has never been deemed an abridgment of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, or carried out by means of language either spoken, written or printed."

See also: *Gitlow* v. *New York*, 268 U. S. 652, 665, ("These words imply urging to action."); *Whitney* v. *California*, 274 U. S. 357, 378, ("State may punish incitement to commit the trespass."); *Cantwell* v. *Connecticut*, 310 U. S. 296, 309, ("Resort to epithets or personal abuse is not in any proper sense communication of information or opinion safeguarded by the Constitution."); *Bridges* v. *California*, 314 U. S. 252, 277, ("On no construction, therefore, can the telegram be taken as a threat either by Bridges or the union to follow an illegal course of action."); *Chaplinsky* v. *New Hampshire*, 315 U. S. 568, 572, ("fighting words . . . are no essential part of any exposition of ideas . . . A statute punishing verbal acts, carefully drawn so as not unduly to impair liberty of expression, is not too vague for a criminal law."); *United* v. *Petrillo*, 332 U. S. 1 (statute); *American Communications* v. *Douds*, 339 U. S. 382, 395, (government may cut off a speaker "only when his views are no longer merely views but threaten, clearly and imminently, to ripen into conduct against which the public has a right to protect itself."); *N. L. R. B.* v. *Denver Bldg. and Constr. T. Council*, 341 U. S. 675 (statute); *Roth* v. *United States* (dissenting opinion), 354 U. S. 476, 514, and *Smith* v. *California*, 361 U. S. 147, 168, (concurring opinion: "Freedom of expression can be suppressed if, and to the extent that, it is so closely brigaded with illegal action as to be an inseparable part of it."); *Speiser* v. *Randall*, 357 U. S. 513, 537, (concurring opinion: "Advocacy which is in no way brigaded with action should always be protected by the First Amendment . . . It is time for government—state or federal—to become concerned with the citizen's advocacy when his ideas and beliefs move into the realm of action."); *Brown* v. *Louisiana*, 383 U. S. 131, 168, 166, (dissenting opinion: "Governments like ours were formed to substitute the rule of law for the rule of force . . . The First Amendment, I think, protects speech, writings, and expression of views in

any manner in which they can be legitimately and validly communicated.") and *Carroll* v. *President and Commissioners of Princess Anne County*, 37 L. W. 4041, 4042 ("speech interlaced with burgeoning violence is not protected by the broad guaranty of the First Amendment").

Thus, in both majority and dissenting opinions, in both affirmances and reversals, the Court has expressed its disapproval of utterances calculated to achieve by naked coercion those ends which the speaker does not achieve by other means of communication.

It is in such context that the statute in question and the interpretation given it by the lower court is considered.

(3) The Trial Court Failed to Consider Section (a)(3) of the Illinois Intimidation Statute As a Protection of Individual Freedom of Choice.

In considering the Intimidation Section on the whole, the court below found that this statute was "designed to prohibit communications intended to compel a person to act against his will" (A. 88). After analyzing the elements of the crime of intimidation, the court carefully examined the scope of the term "threat" (A. 90):

> "The term 'threat' has a sinister and well defined meaning in common parlance and the law. It is the expression of an intention to inflict evil or injury on another! It is more than a mere expression of such intent; it is 'a menace; especially, any menace of such a nature and extent as to unsettle the mind of the person on whom it operates, and to take away from his acts that free and voluntary action which alone constitutes consent.'
>
> Implicit in the word 'threat', as it is used in a criminal statute, is this requirement: that the expression in its context have a reasonable tendency to create apprehension that its originator will act according to its tenor."

It is in light of the elements of the crime of intimidation generally, and the restricted meaning placed on the word threat by Illinois and federal courts specifically, that the constitutionality of Section 12-6 (a) (3) of the Intimidation Statute is approached.

In holding the section unconstitutional, the lower court reasoned (A. 94):

> "The provision is not vague. It is, however, overbroad since it prohibits threats of insubstantial evil. The commission of criminal offenses against persons or property is a substantial evil, and the state may legitimately proscribe the making of threats to commit such offenses. The commission of offenses against public order *only*, however, is not such a substantial evil that the state may prohibit the threat of it. Sub-paragraph (a)(3) proscribes threats to violate any penal statute. It therefore makes criminal threats such as the following: (1) threats by dissentient groups to engage in disorderly conduct, (2) threats by residents of a high-crime neighborhood to carry concealed weapons for their own protection, and (3) threats by mothers to block a dangerous state highway to demonstrate the need for increased safety measures. Indeed, the phrase 'commit any criminal offense' is so broad as to include threats to commit misdemeanors punishable by fine only. These evils are not so substantial that the state's interest in prohibiting the threat of them outweighs the public interest in giving legitimate political discussion a wide berth."

It is readily apparent that the court, in spite of its earlier reasoning, lost sight of the thrust of the statute—the protection of an individual's freedom of choice—and rather confined its analysis to the type of acts threatened. This misdirection of emphasis by the court caused the nature of the criminal acts threatened to be examined without regard to the actual intimidation caused by the threat. The overbearing of the individual's free will was subordinated to a

consideration of whether the threatened criminal act was substantial or not. Yet, as the court itself intimated, a mere statement of action or expression of intent to commit a criminal offense does not satisfy the statute. The statement must be made in such context as to raise it to the level of an extortion by threat, and the threat to commit the criminal offense, regardless of the offense, must be of such nature as to take away from the victim "that free and voluntary action which alone constitutes consent" (A. 90). It is not the substantiality of the criminal offense which is determinative, but rather its tendency to force another to surrender his will. Hence, the substantiality of the evil must go to the threat, and not to the crime threatened.

This is not a statute which prohibits threats in the abstract; it is a statute that prohibits extortion by threat, intimidation by threat, and coercion by threat. Thus, the most serious threat made without the intent to extort is not within the confines of the statute. Whether or not the threat is "substantial" depends upon the victim who is the object of the extortion. Extortion is a robbery. Weapons both great and insignificant can be used. "Substantiality" is not to be found in the weapon. It exists in the gist of the crime, the giving of the victim's property or freedom of choice because of the weapon. Surely the state has the right to protect its citizens, both public and private, from those who would subject their decision-making to threats of committing crimes.

Can it be questioned this late in our history that the state has a legitimate and important interest in ensuring that its citizens and officials act on a rational basis of free choice? This does not mean that all types of pressures be removed; it does not mean that social, economic and political protest can only be exercised within the often sterile confines of inaction. But it does mean that these forms of protest cannot be raised to a level of threats to commit

criminal acts unless the person threatened satisfies the demands. The ultimate issue is whether we are to be a government of law or a government of force.

It is from this perspective that Appellants reject the lower court's conclusion that the Intimidation Statute limits the wide berth which must be afforded legitimate political discussion. It is based on the above stated considerations that Appellants assert that the state has a legitimate interest in proscribing extortion by threats to commit criminal offenses and that such threats are outside the scope of First Amendment protections.

(4) Subsection (a) (3) of the Intimidation Statute Is Not Overbroad.

The court below held that subsection (a)(3) was not vague but it was overbroad in that it "prohibits threats of insubstantial evil." That such a conclusion is a result of an improper viewing of the object of this statute is argued above. Nevertheless, focusing upon the threatened acts alone, as the court did, a comparison of this section with similar federal and state statutes readily indicates that the scope of threatened conduct proscribed by subsection (a)(3) is narrow.

Initially, the court below chose to place no emphasis upon the adjective "criminal" that modifies the word "offense" in the said subsection. The word "offense" is defined in the Illinois Criminal Code as "a violation of any penal statute of this State." Illinois Revised Statutes, 1967, Chap. 38, § 2-12.) This would include quasi-criminal statutes such as traffic offenses and nuisances. Since the type of "offense" described in subsection (a)(3) is a "criminal offense," it would seem that, giving these words their plain meaning, they would refer to those offenses compiled in the Criminal Code. Nowhere in the Statutes of Illinois is there any reference to an offense outside the Criminal

Code as being a criminal offense. A construction of these words to give effect to their plain meaning and uphold the presumption of validity should have been made.

Even if the words "criminal offense" include all the penal statutes of Illinois, the acts which constitute such offenses are far narrower in scope than those acts which, if threatened, cause one to violate federal law. U. S. C. Title 18, § 1951, the "Hobbs Act," prohibits one from interfering with commerce by extortion. Extortion is defined therein as "the obtaining of property from another, with his consent, induced by the wrongful use of actual or threatened force, violence, or fear, or under color of official right." In *Nick* v. *U. S.*, 122 F. 2d 660, cert. den. 314 U. S. 687, rehearing denied 314 U. S. 714, rehearing denied 316 U. S. 710, the defendant labor union official made exorbitant wage demands for the union membership movie operators. He induced the movie theater owners to give him an illegal payoff by the following threat "If the contract is not signed today, there will be no operators tomorrow. I will pull the operators" (p. 667). The defendant's resulting conviction was sustained. Here the threatened conduct was a strike, which, at its worst, may be an unfair labor practice. This is not a crime under the subsection considered. Similarly, in *U. S.* v. *Compagna*, 146 F. 2d 524, cert. den. 324 U. S. 867, rehearing denied 325 U. S. 892, another movie operator conviction case, there was only threatened union activity unless the extortion demands were met. In *Carbo* v. *U. S.*, 314 F. 2d 718, a Hobbs Act violation occurred by these words "We are in for half the fighter (50% of the manager's share) or there won't be a fight," when these words were spoken by a gangster trying to continue his domination of prize fighting (p. 726). Refusing to honor a commitment to participate in a boxing match causes a breach of contract, not a crime. It is completely unrealistic to conclude, as

the lower court did, that unfair labor practices and breaches of contract are more substantial and narrower in scope than crimes.

Title 18, §§ 875, 876, and 877 prohibit extortion by interstate communications or the use of mail (App. B, pp. 29A, 30A, 31A). Here, a person who intends to extort can violate these sections by threatening to "injure the reputation of the addressee or of another or the reputation of a deceased person." Words over the phone such as "give me money or I'll tell everybody that your dead grandmother drank too much," cause a federal offense. At best, the threatened act here would be a tort. Torts are wider in scope and less substantial than crimes.

U. S. C. Title 18, § 873 (App. B, p. 32A) prohibits blackmail by threatening to inform about another's violation of any federal statute. Here, the threatened act, telling the authorities of the federal offense, is protected speech.

U. S. C. Title 18, § 837(d) (App. B, p. 32A), is a subsection of the Explosives Section and it prohibits persons who, by the use of the telephone, mail or other instrument of commerce, threaten to damage or destroy real or personal property to interfere with its use by others. Normally, such acts would be of a serious nature, but one can readily think of a situation where the threat is to destroy a rather small or insignificant piece of personalty. Threatening the burning of two pieces of lumber nailed in the shape of a cross, to cause a group of children to refrain from using a school, results in great harm caused by the threat of an insignificant act. A great multitude of acts could be threatened by a person and cause him to violate this section, and yet it is clear that the acts themselves may not be criminal offenses.

It should be noted that the above federal statutes range in penalty from $500 fines to imprisonment up to twenty years (See App. B).

An examination of the extortion, intimidation and blackmail statutes of the other states also shows that the subsection of the Illinois Intimidation Statute here in question is much narrower in scope.

Forty states include in their statutes, pertaining to extortion and blackmail, threats to accuse another of a crime.[23] As mentioned before, the act of notifying the authorities that a certain person has committed a crime is protected speech.

Seventeen states[24] prohibit extortion by threats of injuring another's reputation. Such an injury may be the subject of a tort, a much wider defined and less evil act than a crime.

In sixteen states[25] one is prohibited from intending to extort by threatening to expose one's deformity. Causing such an exposure may result in a tort or may have no legal consequence. In the same manner, nine states[26] forbid

23. Threats to Accuse One of a Crime:
Alaska, Arizona, Arkansas, Alabama, California, Connecticut, District of Columbia, Delaware, Georgia, Hawaii, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin, Illinois, see Appendix B for statutes.

24. Threats of Injury to Another's Reputation:
Alaska, Alabama, Connecticut, District of Columbia, Delaware, Florida, Georgia, Indiana, Kansas, Kentucky, Maryland, Nevada, Ohio, Tennessee, Virginia, Washington, West Virginia, Illinois, see Appendix B for statutes.

25. Threats to Expose One's Deformity:
California, District of Columbia, Delaware, Florida, Hawaii, Kansas, Kentucky, Louisiana, Minnesota, Nevada, New Mexico, Ohio, Oklahoma, South Carolina, Washington, Alabama, see Appendix B for statutes.

26. Threats to Expose a Secret:
California, Louisiana, Minnesota, Nevada, New Mexico, New York, Oklahoma, Washington, Alabama, see Appendix B for statutes.

extortion by threatening to expose a secret. Here again, such an act of exposure may be tortious or it may not. In any event, it is not conduct sufficiently evil to be raised to the level of a crime.

Three states[27] include in their extortion statutes threats relating to labor or union activities. Again, the act threatened is not as serious as a crime, but is merely a breach of contract, unfair labor practice or may even be a legal strike.

Two states[28] prohibit extortion by threatening to testify or threatening not to testify in a legal claim or defense. Two states[29] similarly prohibit extortion by threats to injure a trade, business, profession or calling. All these threatened acts are wider in scope than crimes.

Several states have proscribed extortion by threats to do acts of a very general nature. New Jersey includes threats "to do any civil injury." (N. J. Stat. Anno. § 2A:105-3.) New York includes threats to "perform any other act which would not in itself materially benefit the actor but is calculated to harm another person materially with respect to his health, safety, business, calling, cases, financial condition, reputation or personal relationships." (McKinney's Consolidated Laws of N. Y., § 135.60-9.) Nebraska, Pennsylvania, South Carolina and Utah state things simply:

> "Whoever by threats, intimidation, coercion, extortion or conspiracy obtains or seeks to obtain money . . ." (Rev. Stat. Neb. § 28-445.) "Whoever by means of written, printed or oral communication intimidates or blackmails, or extorts money or other valuable

27. Threats Relating to Labor Union Activity:
Georgia, New York, Illinois, see Appendix B for statutes.

28. Threats to Testify or Threats Not to Testify:
Georgia, New York, see Appendix B for statutes.

29. Threats to Injure Business or Trade:
Minnesota, Wisconsin, see Appendix B for statutes.

thing . . ." (Purdons Penna. Stat. Anno. Title 18 § 4801.) "Any person who verbally or by printing or writing:

(3) Compels any person to do any act or refrain from doing any lawful act against his will; . . ." (Code of Laws of S. C. § 16-566.1.)

"It is unlawful for any person to exact by threat or coercion any money, tribute or support whatsoever from any person; or to induce him by threats or coercion, to join any organization." (Utah Code Anno. Penal Code, §79-19-9.)

It is evident that the Illinois Statute in question prohibiting extortion by the threat to commit a crime, by comparison to similar federal and state statutes is not overbroad. Rather, it is a properly drawn statute "designed to promote law and order, [and] . . . safeguard legitimate interests in private and public property. (*Cox v. Louisiana*, 379 U. S. 559, 574.)

CONCLUSION

The determination by the three judge court of the unconstitutionality of Chapter 38, Section 12-6(a)(3) of the Illinois Intimidation Statute is based upon the concept that the First Amendment to the Constitution of the United States insulates threats to commit certain minor criminal acts. There is no precedent in this Court for such assertion.

Moreover, since the thrust of the statute is directed to the protection of individuals, both public and private, forced to surrender their freedom of choice, and not to the substantiality or insubstantiality of the acts threatened, as the trial court indicated, the statute is not subject to a challenge of overbreadth.

Finally, the failure of the complaint to specifically delineate a factual pattern demonstrating threatened misuse

of the statute does not require the application of *Dombrowski* v. *Pfister,* 380 U. S. 480.

Appellants, therefore, respectfully request that the decision of the trial court be set aside and that the determination of unconstitutionality of Chapter 38, Section 12-6 (a)(3) of the Illinois Intimidation Statute, Illinois Revised Statutes, 1967, be reversed.

Respectfully submitted,

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APPENDIX A TO BRIEF.

APPLICABLE STATE STATUTES

Alabama Code

TITLE 14

§ 49. *Levying blackmail.*—Any person who shall levy, or attempt to levy blackmail on another, by making, threatening to make, or attempting to make any disclosure, oral or written, or by publication, injurious to the character of any person, for the purpose of getting money or other benefit, or maliciously for the purpose of revenge, and having a tendency to create a breach of the peace, shall, on conviction, be punished by a fine not exceeding one thousand dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, not exceeding twelve months.

§ 50. *Different kinds or modes of blackmail.*—Every person who, with intent thereby to extort or gain any money or other property or to compel or induce another to make, subscribe, execute, alter or destroy any valuable security or instrument or writing affecting or intending to affect any cause of action or defense, or any property, or to influence the action of any public officer, or to do or abet or procure any illegal or wrongful act, shall threaten, directly or indirectly:

To accuse any person of a crime; or

To do any injury to any person or to any member of his family or to any property; or

To publish or connive at publishing any libel; or

To expose or impute to any person any deformity or disgrace; or

To expose any secret; or

Whoever, either verbally, or by any letter or writing, or any written or printed communication, demands of any person, with menaces of personal injury, any chattel, money or valuable securities; or whoever accuses or threatens to accuse, or knowingly sends, or delivers any letter or writing, or any written or printed communication, with or without a name subscribed thereto, or signed with a fictitious name, or with any letter, mark or designation, accusing or threatening to accuse any person of any crime punishable by law, or of any immoral conduct, which, if true, would tend to degrade and disgrace such person, or in any way subject him to the ridicule or contempt of society; or whoever threatens to do any injury to the person or to any member of his family, or property, of any one with intent to extort or gain from such person any chattel, money or valuable security, or any pecuniary advantage whatever, or with like intent to compel the person threatened to do any act, against his will, with the intent aforesaid, is guilty of blackmail, and shall on conviction, be punished as provided in section 49 of this title.

Alaska Statutes

CODE OF CRIMINAL PROCEDURE

TITLE 11 § 11-15-300 *Blackmail*

A person who, either verbally or by written or printed communication: . . . (2) threatens to accuse another of a crime . . .; (3) threatens in any way to subject him to the ridicule or contempt of society, with intent to extort pecuniary advantage or property from him, or with intent to compel him to act against his will, is punishable by im-

prisonment in the penitentiary for not more than five years nor less than six months, or by imprisonment in a jail for not more than one year nor less than three months.

Arizona Revised Statutes

TITLE 13 § 401

A. Extortion is the obtaining of property from another with his consent induced by wrongful use of force or fear . . .

B. The fear may be induced by a threat;

(1) To do an unlawful injury to the person or property of the individual threatened or to his relative or member of his family;

(2) To accuse a person . . . of crime.

13 § 403

A person who unsuccessfully attempts, by means of a verbal threat, to extort money or other property from another, is guilty of a misdemeanor.

Arkansas Statutes Annotated

§ 41-4002

41-4002. *Blackmail defined—Penalty.*—If any person shall wilfully and maliciously send, or deliver, or make, or for the purpose of being delivered or sent shall part with the possession of any letter or writing, with or without a name subscribed thereto, or signed with a fictitious name, or with any letter, mark or designation, threatening therein to accuse any person of a crime, or to do any injury to the person or property of any one, with a view or intent to extort or gain any money or property of any description belonging to another, he shall be deemed guilty of an attempt to rob, and, on conviction, shall be fined in any sum not less than one hundred dollars [$100] or imprisoned in

the penitentiary for a period not less than one [1] nor more than five [5] years, or both. [Chapters of Digest (Apr. 12, 1869), § 3; C. & M. Dig., § 2413; Pope's Dig., § 3038.]

California Code Annotated

PENAL CODE VOL. 48

§ 518

Extortion is the obtaining of property from another, with his consent . . . induced by a wrongful use of force or fear . . .

§ 519

Fear, such as will constitute extortion, may be induced by a threat, either

1. To do an unlawful injury to the person or property of the individual threatened
2. To accuse the individual threatened . . . of a crime
3. To expose, or to impute to him or them any deformity, disgrace or crime
4. To expose any secret affecting him.

Connecticut General Statutes Annotated

TITLE 53 § 40 *Blackmail*

Any person who, either verbally or by written or printed communication, maliciously threatens to accuse another of any crime or offense or, by such communication, maliciously threatens an injury to the person, property or reputation of another, with intent thereby to extort money or any pecuniary advantage whatever or with intent to compel the person threatened to do any act against his will, shall be imprisoned not more than 10 years or fined not more than 5,000 or both.

District of Columbia Code

22-2305

Whoever verbally or in writing accuses or threatens to accuse any person of a crime or of any conduct which, if true, would tend to disgrace such other person, or in any way subject him to the ridicule or contempt of society, or threatens to expose or publish any of his infirmities or failings, with intent to extort from such other person anything of value or any pecuniary advantage whatever, or to compel the person accused or threatened to do or refrain from doing any act, and whoever with such intent publishes any such accusation against any other person shall be imprisoned for not more than 5 years or be fined not more than 1,000 or both.

Delaware Code

11 DEL. C. § 503

Whoever, knowing the contents thereof, and with intent by means thereof to extort or wrongfully gain any money or other property, sends or delivers to any other person a letter or writing whatsoever threatening to accuse any person of a crime, or to do any injury to any person or any property, or to publish or connive at publishing any libel, or to make or cause to be made any slanderous statement, or to expose any deformity of person, or to impute to any person any disgraceful act or conduct; or

Whoever, with intent to extort or wrongfully gain any money or other property, makes any other person any oral statement or communication so threatening—

Shall be fined not more than $5,000 or imprisoned not more than 5 years or both.

Florida Statutes Annotated

§ 836.05 *Threats; Extortion*

Whoever, either verbally or by a written or printed communication, maliciously threatens to accuse another of any crime or offense, or by such communication maliciously threatens an injury to the person, property or reputation of another, or maliciously threatens to expose another to disgrace, or to expose any secret affecting another, or to impute any deformity or lack of charity to another, with intent thereby to extort money or any pecuniary advantage whatsoever, or with intent to compel the person so threatened, or any other person, to do any act or refrain from doing any act against his will, shall be punished by imprisonment in the state prison not exceeding ten years.

Georgia Criminal Code

§ 26-1804

26-1804. *Theft by extortion.*—(a) A person commits theft by extortion when he unlawfuly obtains property of or from another person by threatening to:

(1) Inflict bodily injury on anyone or commit any other criminal offense; or

(2) Accuse anyone of a criminal offense; or

(3) Disseminate any information tending to subject any person to hatred, contempt, or ridicule, or to impair his credit or business repute; or

(4) Take or withhold action as a public official, or cause an official to take or withhold action; or

(5) Bring about or continue a strike, boycott, or other collective unofficial action, if the property is not demanded or received for the benefit of the group in whose interest the actor purports to act; or

(6) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

(b) Venue. In a prosecution under this section the crime shall be considered as having been committed in the county in which the threat was made or received or in the county in which the property was unlawfully obtained.

(c) It is an affirmative defense to prosecution based on paragraphs (2), (3), (4), or (6) that the property obtained by threat of accusation, exposure, lawsuit, or other invocation of official action was honestly claimed as restitution or indemnification for harm done in the circumstance to which such accusation, exposure, lawsuit, or other official action relates, or as compensation for property or lawful services.

(d) A person convited of extortion shall be punished by imprisonment for not less than one nor more than 10 years.

Hawaii Statutes

CHAPTER 283 *Extortion*

§ 283-1. *Defined.* Extortion is the wresting of anything of value from another by duress, menaces, or by any undue exercise of power. [P. C. 1869, c. 19, s. 1; R. L. 1925, s. 4196; R. L. 1935, s. 5870; R. L. 1945, s. 11270.]

§ 283-2. *Imputing crime; degrees; evidence.* Whoever commits extortion by charging or threatening to charge another or any person in whom he is especially interested by reason of marriage, relationship, guardianship, friendship or other tie, with any crime, is, in case the crime is capital, or subject to punishment by imprisonment for five years or more, guilty of extortion in the first degree; in case it is an offense of a lower grade, he is guilty of extortion in the second degree.

In prosecutions under this section, no evidence of the guilt or innocence of the party against whom the extortion is practiced, is admissible. [P. C. 1869, c. 19, ss. 2, 3; R. L. 1925, s. 4197; R. L. 1935, s. 5871; R. L. 1945, s. 11271.]

§ 283-3. *Imputing deformity or disease.* Whoever commits extortion by threatening to charge or impute any secret deformity or disease to him or any person in whom he is especially interested as aforesaid, is guilty of extortion in the second degree. [P. C. 1869, c. 19, s. 4; R. L. 1925, s. 4198; R. L. 1935, s. 5872; R. L. 1945, s. 11272.]

§ 283-4. *Threatening to injure property.* Whoever commits extortion by threatening, directly or indirectly, by words, signs or acts, to burn, destroy, waste, deface or injure his property, real or personal, or that of another in whom he is specially interested, or to do him or such other any malicious injury, is guilty of extortion in the second degree. [P. C. 1869, c. 19, s. 5; R. L. 1925, s. 4199; R. L. 1935, s. 5873; R. L. 1945, s. 11273.]

Indiana Statutes

10-3204 *Criminal Offenses*

10-3204 [2440]. *Blackmail.*—Whoever, either verbally, or by any letter or writing, or any written or printed communication, demands of any person, with menaces of personal injury, any chattel, money or valuable securities; or whoever accuses or threatens to accuse, or knowingly sends or delivers any letter or writing or any written or printed communication, with or without a name subscribed thereto, or signed with a fictitious name, or with any letter, mark or designation, accusing or threatening to accuse any person of any crime punishable by law, or of any immoral conduct, which, if true, would tend to degrade and disgrace such person, or in any way subject him to the ridicule or contempt of society; or whoever threatens to

do any injury to the person or property of any one, with intent to extort or gain from such person any chattel, money or valuable security, or any pecuniary advantage whatsoever, or with any intent to compel the person threatened to do any act against his will, with the intent aforesaid, is guilty of blackmailing, and shall, on conviction, be imprisoned in the state prison not less than one [1] year nor more than five [5] years, to which may be added a fine not exceeding one thousand dollars [$1,000]. [Acts 1905, ch. 169, § 370, p. 584.]

Iowa Statutes

CHAPTER 720.1

720.1 *Malicious threats to extort*

If any person, either verbally or by any written or printed communication, maliciously threaten to accuse another of a crime or offense, or to do any injury to the person or property of another, with intent to extort any money or pecuniary advantage whatever, or to compel the person so threatened to do any act against his will, he shall be imprisoned in the penitentiary not more than five years or be fined not exceeding one thousand dollars, or be imprisoned in the county jail not exceeding one year, or both such fine and imprisonment.

Kansas Statutes Annotated

CHAPTER 21-2412

21-2412. *Blackmail; penalty.* That whoever, either verbally or by any letter or writing or written or printed communiction sent or delivered by him, demands of any person, with menaces, any chattel, money, or valuable security; or accuses, or knowingly sends or delivers any letter or writing or any written or printed communication, with or without a name, or with any letter, mark, or designation,

accusing or threatening to accuse any person of a crime punishable by law, or of any immoral conduct, which, if true, would tend to degrade and disgrace such person, or to expose or publish any of his infirmities or failings, or in any way to subject him to the ridicule or contempt of society, or to do an injury to the person or property of any person, with intent to extort or gain from such person any chattel, money, or valuable security, or any pecuniary advantage whatsoever, or with intent to compel the person threatened to do any act against his will, with the intent aforesaid, shall be deemed guilty of a felony, and upon conviction thereof be imprisoned in the penitentiary not more than five years nor less than one year, and may be fined not more than one thousand dollars. [L. 1903, ch. 215, § 1; June 1; R. S. 1923, 21-2412.]

Kentucky Revised Statutes

435.270

Robbery, offenses of, KRS 433.120 to 433.150, 433.170

435.270 [1376q-2] *Blackmail.* Any person who, knowing the contents of the letter, and with intent by means of it to extort or gain any money or other property, or to do, abet or procure any illegal or wrongful act, sends, delivers or in any manner causes to be forwarded or received or makes or parts with for the purpose that there may be sent or delivered, any letter or other writing threatening to accuse any person of a crime, to do an injury to any person or to any property, to publish or connive at publishing any libel or to expose or impute to any person any deformity or disgrace, shall be confined in the penitentiary for not less than one nor more than ten years.

Louisiana Revised Statutes

TITLE 14 § 66

§ 66. *Extortion*

Extortion is the commuication of threats to another with the intention thereby to obtain anything of value or any acquittance, advantage, or immunity of any description. The following kinds of threats shall be sufficient to constitute extortion:

(1) A threat to do any unlawful injury to the person or property of the individual threatened or of any member of his family or of any other person held dear to him;

(2) A threat to accuse the individual threatened or any member of his family or any other person held dear to him of any crime;

(3) A threat to expose or impute any deformity or disgrace to the individual threatened or to any member of his family or to any other person held dear to him;

(4) A threat to expose any secret affecting the individual threatened or any member of his family or any other person held dear to him;

(5) A threat to do any other harm.

Whoever commits the crime of extortion shall be imprisoned at hard labor for not less than one nor more than fifteen years.

Maine Statutes

TITLE 17 § 3702

§ 3702. *Intent to extort*

Whoever, verbally or by written or printed communication, maliciously threatens to accuse another of a crime or offense, or to injure his person or property, with intent thereby to extort money or to procure any advantage from

him, or to compel him to do any act against his will, when such offense is of a high and aggravated nature, shall be deemed guilty of a felony and on conviction thereof shall be punished by a fine of not more than $500 or by imprisonment for not more than 2 years; but when such offense is not of a high and aggravated nature, shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not more than $100 or by imprisonment for not more than 11 months.

R. S. 1954, c. 130, § 28.

Maryland Statutes

ARTICLE 27 § 561, 562, 563

§ 561. *Sending, delivering, etc., threatening letter, etc.*

Every person who shall knowingly send or deliver, or shall make, and, for the purpose of being delivered or sent, shall part with the possession of any letter or writing with or without a name subscribed thereto, or signed with a fictitious name, or with any letter, mark or other designation, threatening therein to accuse any person of any crime of an indictable nature under the laws of this State, or of anything, which, if true, would bring such person into contempt or disrepute or to do any injury to the person or property of anyone, with a view or intent to extort or gain any money, goods or chattels or other valuable thing shall be guilty of felony, and being convicted thereof shall be punished by imprisonment in the penitentiary for not less than two nor more than ten years. (An. Code, 1951, § 633; 1939, § 584; 1924, § 495; 1912, § 447; 1904, § 395; 1896, ch. 396, § 257A.)

§ 562. *Threatening verbally*

Every person who shall verbally threaten to accuse any person of any crime of an indictable nature under the laws of this State, or of anything, which, if true, would bring

such person into contempt or disrepute, or to do any injury to the person or property of anyone, with a view to extort or gain any money, goods or chattels or any other valuable thing shall be guilty of felony, and being convicted thereof shall be punished by imprisonment in the penitentiary for not less than two nor more than ten years. (An. Code, 1951, § 634; 1939, § 585; 1924, §495; 1912, § 448; 1904, § 396; 1896, ch. 396, § 257B.)

§ 563. *Extorting by false accusation*

Any person who with intent to extort money or procure other profit shall falsely accuse or threaten to accuse another of any crime, or of anything which if the accusation were true would tend to bring him into contempt or disrepute, shall be deemed guilty of a misdemeanor, punishable by imprisonment in jail or the house of correction not exceeding two years. (An. Code, 1951, § 635; 1939, § 586; 1924, § 497; 1912, § 449; 1904, § 397; 1890, ch. 98.)

Annotated Laws of Massachusetts

CHAPTER 265 § 25

§ 25. *Attempt to Extort Money, etc., by Threat*

Whoever, verbally or by a written or printed communication, maliciously threatens to accuse another of a crime or offence, or by a verbal or written or printed communication maliciously threatens an injury to the person or property of another, or any police officer or person having the powers of a police officer, or any officer, or employee of any licensing authority who verbally or by written or printed communication maliciously and unlawfully uses or threatens to use against another the power or authority vested in him, with intent thereby to extort money or any pecuniary advantage, or with intent to compel any person to do any act against his will, shall be punished by im-

prisonment in the state prison for not more than fifteen years, or in the house of correction for not more than two and one half years, or by a fine of not more than five thousand dollars, or both. (RS 125, § 17; 1853, 412; GS 160, § 28; PS 202, § 29; RL 207, § 25; 1914, 635; 1918, 257, § 464; 1919, 5; 1920, 2; 1932, 211; 1953, 294.)

Michigan Statutes Annotated

§ 28.410 *Malicious threats to extort money or pecuniary advantage or to compel or prevent doing of any act.*] SEC. 213. Any person who shall, either orally or by a written or printed communication, maliciously threaten to accuse another of any crime or offense, or shall orally or by any written or printed communication maliciously threaten any injury to the person or property or mother, father, husband, wife or child of another with intent thereby to extort money or any pecuniary advantage whatever, or with intent to compel the person so threatened to do or refrain from doing any act against his will, shall be guilty of a felony, punishable by imprisonment in the state prison not more than twenty [20] years or by a fine of not more than ten thousand [10,000] dollars. (CL '48, § 750.213.)

Minnesota Statutes Annotated

§ 609.27

609.27 *Coercion*

Subdivision 1. *Acts constituting.* Whoever orally or in writing makes any of the following threats and thereby causes another against his will to do any act or forebear doing a lawful act is guilty of coercion and may be sentenced as provided in subdivision 2:

(1) A threat to unlawfully inflict bodily harm upon, or hold in confinement, the person threatened or another,

when robbery or attempt to rob is not committed thereby; or

(2) A threat to unlawfully inflict damage to the property of the person threatened or another; or

(3) A threat to unlawfully injure a trade, business, profession or calling; or

(4) A threat to expose a secret or deformity, publish a defamatory statement or otherwise to expose any person to disgrace or ridicule; or

(5) A threat to make or cause to be made a criminal charge, whether true or false; provided, that a warning of the consequences of a future violation of law given in good faith by a magistrate, peace officer, or prosecuting attorney to any person shall not be deemed a threat for the purposes of this section.

Vernon's Missouri Annotated Statutes

§ 560.130

560.130. *Robbery in third degree*

If any person shall, either verbally or by a written or printed communication, accuse or threaten to accuse another of a felony, or shall threaten to do any injury to the person or property whatever of anyone, with a view or intent to extort or gain any money or property of any description belonging to another, and shall, by intimidating him with said accusation or threat, extort or gain from him any money or property, every such offender shall be deemed guilty of robbery in the third degree. (R. S. 1939, § 4452)

Revised Statutes of Nebraska

§ 28-445

28-445. *Blackmail by threats; penalty.* Whoever, by threats, intimidation, coercion, extortion or conspiracy, obtains or seeks to obtain money or other valuable consideration, or whoever causes the same to be done directly or indirectly from any person, or compels him to perform any act not consistent with common law or equity, or whoever by such threats, coercion, intimidation, extortion or conspiracy, induces any person to surrender anything of value or relinquish any right guaranteed by the laws of Nebraska, in consideration of such threats, coercion, intimidation, extortion or conspiracy, shall be deemed guilty of blackmail, and upon conviction thereof shall be confined in the Nebraska Penal and Correctional Complex for not more than three years nor less than one year, or be fined not less than two hundred dollars nor more than five hundred dollars for each offense.

Nevada Revised Statutes

§ 205.320

205.320 *Threats constituting extortion; punishment.* Every person who, with intent thereby to extort or gain any money or other property or to compel or induce another to make, subscribe, execute, alter or destroy any valuable security or instrument or writing affecting or intended to affect any cause of action or defense, or any property, or to influence the action of any public officer, or to do or abet or procure any illegal or wrongful act, whether or not such purpose is accomplished, shall threaten directly or indirectly:

1. To accuse any person of a crime; or
2. To do an injury to any person or to any property; or

3. To publish or connive at publishing any libel; or

4. To expose or impute to any person any deformity or disgrace; or

5. To expose any secret,

shall be punished by imprisonment in the state prison for not less than 1 year nor more than 10 years, or by a fine of not more than $5,000, or by both fine and imprisonment.

[1911 C & P § 474; RL § 6739; NCL § 10423]—(NRS A 1967, 502)

New Hampshire Revised Statutes

§ 572:46

572:46 *Blackmail.* Whoever, either verbally or by a written or printed communication, maliciously threatens to accuse another of a crime or offense, or by such communication maliciously threatens an injury to the person or property of another, with intent thereby to extort money or any pecuniary advantage, or with intent to compel the person so threatened to do any act against his will, shall be imprisoned not more than ten years, or fined not more than five thousand dollars, or both.

Sources: 1907, 30:1. PL 380:39. RL 442:37.

New Jersey Statutes Annotated

§ 2A:105-3

2A:105–3. *Sending or delivering threatening letters or letters demanding money*

Any person who knowingly sends or delivers any letter or writing, whether signed or unsigned, or signed with a fictitious name:

a. Threatening to accuse any person of an indictable crime, with intent to extort any money or valuable thing; or

b. Demanding money or other valuable thing under threat of injury to person or property; or

c. Threatening to injure, maim, wound, kill or murder any person, or to burn, destroy or injure his property, or to do any civil injury to any person or to his property, though no money or other valuable thing be demanded—

Is guilty of a misdemeanor.

New Mexico Statutes

§ 40A-16-8

40A-16-8. *Extortion.* Extortion consists of the communication or transmission of any threat to another by any means whatsoever with intent thereby to wrongfully obtain anything of value or to wrongfully compel the person threatened to do or refrain from doing any act against his will.

Any of the following acts shall be sufficient to constitute a threat under this section:

A. A threat to do an unlawful injury to the person or property of the person threatened or of another;

B. A threat to accuse the person threatened, or another, of any crime;

C. A threat to expose, or impute to the person threatened, or another, any deformity or disgrace;

D. A threat to expose any secret affecting the person threatened, or another; or

E. A threat to kidnap the person threatened or another.

Whoever commits extortion is guilty of a third degree felony.

McKinney's Consolidated Laws of New York

§ 135.60

§ 135.60 *Coercion in the second degree*

A person is guilty of coercion in the second degree when he compels or induces a person to engage in conduct which the latter has a legal right to abstain from engaging in, or to abstain from engaging in conduct in which he has a legal right to engage, by means of instilling in him a fear that, if the demand is not complied with, the actor or another will:

1. Cause physical injury to a person; or

2. Cause damage to property; or

3. Engage in other conduct constituting a crime; or

4. Accuse some person of a crime or cause criminal charges to be instituted against him; or

5. Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or

6. Cause a strike, boycott or other collective labor group action injurious to some person's business; except that such a threat shall not be deemed coercive when the act or omission compelled is for the benefit of the group in whose interest the actor purports to act; or

7. Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

8. Use or abuse his position as a public servant by performing some act within or related to his official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or

9. Perform any other act which would not in itself materially benefit the actor but which is calculated to harm

another person materially with respect to his health, safety, business, calling, career, financial condition, reputation or personal relationships.

Coercion in the second degree is a class A misdemeanor. L. 1965, c. 1030, eff. Sept. 1, 1967.

General Statutes of North Carolina

§ 14-118

§ 14-118. *Blackmailing.*—If any person shall knowingly send or deliver any letter or writing demanding of any other person, with menaces and without any reasonable or probable cause, any chattel, money or valuable security; or if any person shall accuse, or threaten to accuse, or shall knowingly send or deliver any letter or writing accusing or threatening to accuse any other person of any crime punishable by law with death or by imprisonment in the State's prison, with the intent to extort or gain from such person any chattel, money or valuable security, every such offender shall be guilty of a misdemeanor. (R. C., c. 34, s. 110; Code, s. 989; Rev., s. 3428; C. S., s. 4291.)

Page's Ohio Revised Code

§ 2901.38

§ 2901.38 *Blackmailing.* (GC § 13384)

No person shall, by threat delivered orally or by written or printed communication demand of another a chattel, money, or valuable security, or accuse, or knowingly send or deliver a written or printed communication, with or without a name, or with a letter, mark, or designation, accusing or threatening to accuse another person of a crime punishable by law, or of immoral conduct, which, if true, would tend to degrade and disgrace such other person, or threatening to expose or publish any of the infirmities or failings

of another, or to subject such other persons to the ridicule or contempt of society, or to do any injury to the person or property of another with intent to extort or gain from him a chattel, money, or valuable security or a pecuniary advantage, or, with intent to compel another to do an act against his will.

Whoever violates this section shall be fined not more than one thousand dollars and shall be imprisoned not less than one nor more than five years.

Oklahoma Statutes Annotated

§ 1481. *Extortion defined*

Extortion is the obtaining of property from another with his consent, induced by a wrongful use of force or fear, or under color of official right. R. L. 1910, § 2682.

§ 1482. *Threats constituting extortion*

Fear such as will constitute extortion, may be induced by a threat, either:

1st. To do an unlawful injury to the person or property of the individual threatened, or to any relative of his or member of his family; or,

2nd. To accuse him, or any relative of his or member of his family, of any crime; or,

3rd. To expose, or impute to him, or them, any deformity or disgrace; or,

4th. To expose any secret affecting him or them. R. L. 1910, § 2683.

Oregon Revised Statutes

§ 163.480

163.480. *Threatening injury or accusation of crime; intent to extort.* Any person who verbally or by any written or printed communication, threatens any injury to the

person or property of another, or that of any person standing in the relation of parent or child, husband or wife, or sister or brother to the other person, or threatens to accuse another of any crime with intent thereby to extort any pecuniary advantage or property from him, or with intent to compel him to do any act against his will, shall be punished upon conviction by imprisonment in the penitentiary for not more than 10 years, or by imprisonment in the county jail for not more than one year.

[Amended by 1963 c. 406 § 1]

Purdon's Pennsylvania Statutes Annotated

TITLE 18

§ 4801. *Blackmail*

Whoever by means of written, printed or oral communications, intimidates, or levies blackmail, or extorts money, property or other valuable thing from any person or by such means attempts to intimidate, annoy, or levy blackmail, or extort money, property or other valuable thing from any person, is guilty of a misdemeanor, and on conviction, shall be sentenced to imprisonment not exceeding three (3) years, or to pay a fine not exceeding two thousand dollars ($2,000), or both. 1939, June 24, P. L. 872, § 801.

General Laws of Rhode Island

CHAPTER 42 § 11-42-2

11-42-2. *Extortion and blackmail.*—Whoever, verbally or by a written or printed communication, maliciously threatens to accuse another of a crime or offense, or by a verbal or written or printed communication maliciously threatens any injury to the person or property of another, with intent thereby to extort money or any pecuniary advantage, or with intent to compel any person to do any

act against his will, shall be punished by imprisonment in the adult correctional institutions for not more than fifteen (15) years, or by a fine of not more than five thousand dollars ($5,000), or both.

Code of Laws of South Carolina

§ 16-566.1

§ 16-566.1. *Blackmail.*—Any person who verbally or by printing or writing:

(1) Accuses another of a crime or offense;

(2) Exposes or publishes any of another's personal or business acts, infirmities or failings; or

(3) Compels any person to do any act, or to refrain from doing any lawful act, against his will;

With intent to extort money or any other thing of value from any person, or attempts or threatens to do any of such acts, with the intent to extort money or any other thing of value, shall be guilty of blackmail, and upon conviction shall be fined not more than five thousand dollars or imprisoned for not more than ten years, or both, in the discretion of the court. (1957 (50) 191.)

Tennessee Code Annotated

Chapter 43 § 39-4301

39-4301. *Threats for purpose of extortion or obtaining action—Penalty.*—If any person, either verbally or by written or printed communication, maliciously threaten to accuse another of a crime, offense, or immoral act, or to do any injury to the person, reputation or property of another, with intent thereby to extort any money, property, or pecuniary advantage whatever, or to compel the person so threatened to do any act against his will, he shall, on conviction, be punished by imprisonment in the penitentiary

not less than two (2) years nor more than five (5) years. [Code 1858, § 4633; Shan., § 6474; mod. Code 1932, § 1080.]

Vernon's Penal Code of Texas

VOLUME 2(a) ARTICLE 1268 AND 1268(2)

ART. 1268. [1446] [966] [813] *Threatening letter*

Whoever shall knowingly send or deliver to another any letter or writing, whether signed or not, threatening to accuse such other person of a criminal offense with a view of extorting money, property, thing of value, or any advantage whatever from such other person, or threatening to kill or in any manner injure the person of such other, or to burn or otherwise destroy or injure any of his property, real or personal, or to do any other injury to such other person, shall be fined not less than one hundred nor more than one thousand dollars, and in addition thereto may be imprisoned in jail not exceeding one year. Added in revising, 1879.

ART. 1268a. *Threats to extort money*

Whoever shall threaten to take the life of any human being or to inflict upon any human being any serious bodily injury, or to burn, injure or destroy any property of any person for the purpose or with the view of extorting money or anything of value from the person threatened shall be guilty of a felony. One guilty of the above offense shall be confined in the State Penitentiary not less than five nor more than twenty-five years. Acts 1931, 42nd Leg., p. 11, ch. 10, § 1.

Utah Code Annotated

VOLUME 8 (Penal Code) § 76-19-9

76-19.9. *Coercion—Exacting money—Inducing to join organization.*—It is unlawful for any person to exact, by threat or coercion, any money, tribute or support whatsoever from any person; or to induce him, by threats or coercion, to join any organization. Any person violating any of the provisions of this section is guilty of a misdemeanor.

Vermont Statutes Annotated

TITLE 13 § 1701

§ 1701. *Definition and penalty*

A person who maliciously threatens to accuse another of a crime or offense, or with an injury to his person or property, with intent to extort money or other pecuniary advantage, or with intent to compel the person so threatened to do an act against his will, shall be imprisoned in the state prison not more than two years or fined not more than $500.00.

Code of Virginia

ARTICLE 9 § 18.1-184

§ 18.1-184. *Extorting money, etc., by threats.*—If any person threaten injury to the character, person, or property of another person or accuse him of any offense and thereby extort money, property, or pecuniary benefit or any note, bond, or other evidence of debt from him of any other person, he shall be confined in the penitentiary not less than one nor more than ten years or, in the discretion of the jury or the court trying the case without a jury, be confined in jail not exceeding one year and fined not ex-

ceeding one thousand dollars, either or both. (Code 195 § 18-232; 1960, c. 358.)

Revised Code of Washington

§ 9.33.010

§ 9.33.010 *Extortion.* Every person, who, under circumstances not amounting to robbery, shall extort or gain any money, property or advantage, or shall induce or compel another to make, subscribe, execute, alter or destroy any valuable security or instrument or writing affecting or intended to affect any cause of action or defense, or any property, by means of force or any threat, either—

(1) To accuse any person of a crime; or

(2) To do any injury to any person or to any property; or

(3) To publish or connive at publishing any libel; or

(4) To expose or impute to any person any deformity or disgrace; or

(5) To expose any secret,

Shall be guilty of extortion and shall be punished by imprisonment in the state penitentiary for not more than five years.

§ 9.33.060 *Coercion.* Every person who, with intent to compel another to do or abstain from doing an act which such other person has a right to do, or abstain from doing, shall wrongfully and unlawfully—

(1) Use violence or inflict injury upon such other person or any of his family, or upon his property, or threaten such violence or injury; or

(2) Deprive such person of any tool, implement or clothing, or hinder him in the use thereof; or

(3) Attempt to intimidate such person by threats or force, Shall be guilty of a misdemeanor.

West Virginia Code

§ 61-2-13

§ 61-2-13. *Extortion or attempted extortion by threats; penalties*

If any person threaten injury to the character, person or property of another person, or to the character, person or property of his wife or child, or to accuse him or them of any offense, and thereby extort money, pecuniary benefit, or any bond, note or other evidence of debt, he shall be guilty of a felony, and, upon conviction, shall be confined in the penitientiary not less than one nor more than five years. And if any person make such threat of injury or accusation of an offense as herein set forth, but fail thereby to extort money, pecuniary benefit, or any bond, note or other evidence of debt, he shall be guilty of a misdemeanor, and, upon conviction, shall be confined in jail not less than two nor more than twelve months and fined not less than fifty nor more than five hundred dollars. (Code 1849, c. 191, § 13; Code 1860, c. 191, § 13; Code 1868, c. 144, § 13; 1882, c. 118, § 13; Code 1923, c. 144, § 13.)

Wisconsin Statutes Annotated

§ 943.30

943.30 *Threats to injure or accuse of crime*

Whoever, either verbally or by any written or printed communication, maliciously threatens to accuse another of any crime or offense, or to do any injury to the person, property, business, profession, calling or trade, or the profits and income of any business, profession, calling or trade of another, with intent thereby to extort money or any pecuniary advantage whatever, or with intent to compel the person so threatened to do any act against his will or omit to do any lawful act, may be fined not more than $2,000 or imprisoned not more than 5 years or both.

APPENDIX B TO BRIEF.

APPLICABLE FEDERAL STATUTES.

U. S. C. TITLE 18 § 1951

§ 1951. *Interference with commerce by threats or violence*

(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.

(b) As used in this section—

(1) The term "robbery" means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.

(2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

(3) The term "commerce" means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any

point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction.

TITLE 18 §§ 875, 876, 877

§ 875. *Interstate communications*

(a) Whoever transmits in interstate commerce any communication containing any demand or request for a ransom or reward for the release of any kidnapped person, shall be fined not more than $5,000 or imprisoned not more than twenty years, or both.

(b) Whoever, with intent to extort from any person, firm, association, or corporation, any money or other thing of value, transmits in interstate commerce any communication containing any threat to kidnap any person or any threat to injure the person of another, shall be fined not more than $5,000 or imprisoned not more than twenty years, or both.

(c) Whoever transmits in interstate commerce any communication containing any threat to kidnap any person or any threat to injure the person of another, shall be fined not more than $1,000 or imprisoned not more than five years, or both.

(d) Whoever, with intent to extort from any person, firm, association, or corporation, any money or other thing of value, transmits in interstate commerce any communication containing any threat to injure the property or reputation of the addressee or of another or the reputation of a deceased person or any threat to accuse the addressee or any other person of a crime, shall be fined not more than $500 or imprisoned not more than two years, or both.

§ 876. *Mailing threatening communications*

Whoever knowingly deposits in any post office or authorized depository for mail matter, to be sent or delivered by the Post Office Department or knowingly causes to be delivered by the Post Office Department according to the direction thereon, any communication, with or without a name or designating mark subscribed thereto, addressed to any other person, and containing any demand or request for ransom or reward for the release of any kidnapped person, shall be fined not more than $5,000 or imprisoned not more than twenty years, or both.

Whoever, with intent to extort from any person any money or other thing of value, so deposits, or causes to be delivered, as aforesaid, any communication containing any threat to kidnap any person or any threat to injure the person of the addressee or of another, shall be fined not more than $5,000 or imprisoned not more than twenty years, or both.

Whoever knowingly so deposits or causes to be delivered as aforesaid, any communication with or without a name or designating mark subscribed thereto, addressed to any other person and containing any threat to kidnap any person or any threat to injure the person of the addressee or of another, shall be fined not more than $1,000 or imprisoned not more than five years, or both.

Whoever, with intent to extort from any person any money or other thing of value, knowingly so deposits or causes to be delivered, as aforesaid, any communication with or without a name or designating mark subscribed thereto, addressed to any other person and containing any threat to injure the property or reputation of the addressee or of another, or the reputation of a deceased person, or any threat to accuse the addressee or any other person of a crime, shall be fined not more than $500 or imprisoned not more than two years, or both.

§ 877. *Mailing threatening communications from foreign country*

Whoever knowingly deposits in any post office or authorized depository for mail matter of any foreign country any communication addressed to any person within the United States, for the purpose of having such communication delivered by the post office establishment of such foreign country to the Post Office Department of the United States and by it delivered to such addressee in the United States, and as a result thereof such communication is delivered by the post office establishment of such foreign country to the Post Office Department of the United States and by it delivered to the address to which it is directed in the United States, and containing any demand or request for ransom or reward for the release of any kidnaped person, shall be fined not more than $5,000 or imprisoned not more than twenty years, or both.

Whoever, with intent to extort from any person any money or other thing of value, so deposits as aforesaid any communication for the purpose aforesaid, containing any threat to kidnap any person or any threat to injure the person of the addressee or of another, shall be fined not more than $5,000 or imprisoned not more than twenty years, or both.

Whoever knowingly so deposits as aforesaid any communication, for the purpose aforesaid, containing any threat to kidnap any person or any threat to injure the person of the addressee or of another, shall be fined not more than $1,000 or imprisoned not more than five years, or both.

Whoever, with intent to extort from any person any money or other thing of value, knowingly so deposits as aforesaid, any communication, for the purpose aforesaid, containing any threat to injure the property or reputation

of the addressee or of another, or the reputation of a deceased person, or any threat to accuse the addressee or any other person of a crime, shall be fined not more than $500 or imprisoned not more than two years, or both.

U. S. C. TITLE 18 § 873

§ 873. *Blackmail*

Whoever, under a threat of informing, or as a consideration for not informing, against any violation of any law of the United States, demands or receives any money or other valuable thing, shall be fined not more than $2,000 or imprisoned not more than one year, or both.

U. S. C. TITLE 18 § 837(d)

(d) Whoever, through the use of the mail, telephone, telegraph, or other instrument of commerce, willfully imparts or conveys, or causes to be imparted or conveyed, any threat, or false information knowing the same to be false, concerning an attempt or alleged attempt being made, or to be made, to damage or destroy any building or other real or personal property for the purpose of interfering with its use for educational, religious, charitable, residential, business, or civic objectives, or of intimidating any person pursuing such objectives, shall be subject to imprisonment for not more than one year or a fine of not more than $1,000, or both.